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BY HAND

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 711  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings

JAN 12 2004

Part of  
Public Record



Re: Docket No. AB-842X, Almono LP -- Abandonment  
Exemption -- In Allegheny County, Pennsylvania

Dear Mr. Secretary:

On the afternoon of January 9, 2004, the undersigned counsel for Almono LP ("Almono"), the Petitioner in the above proceeding seeking an exemption for abandonment as well as waiver from the Offer of Financial Assistance ("OFA") procedures, received a letter from counsel for Allegheny Valley Railroad Company ("AVR"). AVR's letter, a copy of which was addressed to the Board's Secretary and referenced the captioned proceeding, stated AVR's intent to submit an OFA and requested Almono to provide information for that purpose. AVR's letter also stated AVR's opposition to Almono's OFA waiver request.

Almono understands that the Commission's procedures call for a decision on Almono's petition to be issued by January 13, 2004. AVR's letter thus represents a last-minute effort to derail Almono's proposed abandonment. Indeed, comments on Almono's proposed abandonment, as well as any opposition to the OFA waiver request, were due November 4, 2003, over two months ago, under the Commission's notice in this proceeding issued October 15, 2003.

AVR's opposition to Almono's OFA waiver request is thus untimely, and should be denied for that reason alone. Moreover, there are compelling substantive reasons for rejecting AVR's opposition.

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First, Almono's abandonment request is supported by the shippers serviced by the line proposed for abandonment. The OFA procedures exist to protect shippers, not other carriers, especially those that wait until the last minute to assert their purported interests. Accordingly, AVR has no standing to oppose the OFA waiver request.

Second, AVR's claim that it will suffer economic hardship from the abandonment because it will lose a "substantial percentage of the traffic moving" on a connecting line it recently leased from CSXT is a problem entirely of AVR's own making. AVR can make no claim that it only recently became aware of Almono's proposed abandonment. Almono's acquisition notice made clear that Almono intended to abandon the line with the affected shipper's support. F.D. No. 32450, Almono LP--Acquisition and Operation Exemption--Line of Monongahela Connecting Railroad Company (STB served Oct. 2, 2002) at 1 n.2, and AVR (or related entities) have been providing private service to the affected shipper throughout the period of Almono's ownership of the line. As AVR was undoubtedly aware of Almono's plans from their inception, it was incumbent upon AVR to take the proposed abandonment into account in its voluntary decision to lease the CSXT line. Any reliance by AVR on the continuing common carrier operation of the Almono line was inherently unreasonable and certainly not a legitimate candidate for protection under the OFA procedures.

Third, it is important to realize that Almono acquired the line of the former Monongahela Connecting Railroad Company and the surrounding property from the LTV Steel Corporation ("LTV"), which was (and still is) liquidating its assets in bankruptcy. *Id.*, n.1. AVR, as well as any other person, had the same opportunity to acquire the line and the assets in question. Almono was the only party that sought to do so, and Almono did so only after first gaining the support of the shipper addressed by AVR. *Id.*, n.2. Having failed to come forward at the earlier time, AVR's would-be interests are not entitled to greater protection at the last minute.

Fourth, it is also important to understand and appreciate that, as explained in the Petition for Exemption and in the Board's original acquisition notice at n.2, Almono's purpose in acquiring the line was and remains to redevelop the surrounding property, and Almono has expended substantial resources -- in excess of \$9 million alone just to acquire the property -- to the endeavor. Furthermore, Almono and its partners are nonprofit institutions that are seeking not merely monetary gains, but to make a substantial contribution to the public welfare and economic development of the Pittsburgh area. The continued common carrier existence of the line is inconsistent with Almono's redevelopment plans. Accordingly, an appropriate going concern value analysis would

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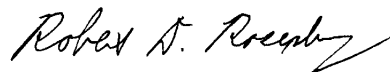
not be confined to the mere value of the line, but would need to take into account the overall economic and public value of the surrounding property when redeveloped. AVR has given no indication that is prepared to provide that level of compensation.

Almono did not submit its OFA waiver request lightly. Instead, it reflected the reality that the redevelopment of the property, which Almono is undertaking at substantial cost and risk, should not be limited by the continued common carrier existence of the rail line. The shipper's support for Almono's eventual removal of the line was an essential condition for Almono's acquisition of the line and surrounding property in the first place. AVR's last-minute intrusion should not be allowed to upset Almono's substantial undertaking.

Almono adds that even following abandonment, AVR or related non-common carrier entities will have a substantial opportunity to continue serving the affected shipper (assuming the affected shipper chooses to continue doing business with AVR). Almono has no immediate plans to remove the line, and certainly not on short notice. Instead, Almono looks forward to continuing to work with the affected shipper to balance its needs and Almono's redevelopment plans. Private service to the shipper appears likely to continue for several years at least. However, redevelopment requires that Almono be able to remove the line at the appropriate time without regulatory uncertainty, which is why Almono sought a waiver from the OFA procedures for its abandonment and why the waiver should be granted.

Accordingly, Almono respectfully requests that the Board grant the abandonment petition with a waiver of the OFA procedures.

Respectfully submitted,



Robert D. Rosenberg  
An Attorney for Almono LP

RDR:kaw

cc: Keith G. O'Brien, Esq., Counsel for Allegheny Valley Railroad Company  
(by hand)